

EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

-----x
TETRIS HOLDING, LLC, and THE
TETRIS COMPANY, LLC,

Plaintiffs and,

Counterclaim Defendant Civil Action No.

-against- 3:09-CV-6115
(FLW)(DEA)

XIO INTERACTIVE,

Defendant and

Counterclaim Plaintiff.

-----x
August 11, 2011

11:23 a.m.

Videotaped Deposition of JEFFREY C. NEU,
taken by Plaintiff, pursuant to subpoena, at the
offices of Kirkland & Ellis, LLP, 601 Lexington
Avenue, New York, New York, before SUZANNE
PASTOR, a Shorthand Reporter and Notary Public
within and for the State of New York.

A P P E A R A N C E S:

KIRKLAND & ELLIS LLP

Attorneys for Plaintiffs and Counterclaim
Defendants

601 Lexington Avenue
New York, New York 10022

BY: JOHANNA SCHMITT, ESQ.

(212) 446-4841
johanna.schmitt@kirkland.com

DURIE TANGRI

Attorneys for Defendant and Counterclaim
Plaintiff

217 Leidesdorff Street
San Francisco, California 94111

BY: SONALI D. MAITRA, ESQ.

(415) 362-6666
smaitra@durietangri.com

KUZAS NEU

Attorneys for the Witness
318 Newman Springs Road
Redbank, New Jersey 07701

BY: LUC ULMET, ESQ.

(646) 351-1196
luc.ulmet@kuzas.com

ALSO PRESENT:

MICHAEL DAVIDSON, Videographer

1 NEU - AUGUST 11, 2011

2 A. Correct. Same clients, just
3 brought on a new partner.

4 Q. This is Exhibit 10.

5 (Neu Exhibit 10 for identification,
6 Bates NEU 21 through 25.)

7 Q. Exhibit 10 is a document that was
8 produced by you, Jeff. Just to explain, you
9 didn't produce documents with a Bates number so
10 we numbered each page of the documents that you
11 produced. That's why at the bottom it says
12 "endorsed by TTC" and then it has a control
13 number at the bottom. Do you see that?

14 A. Yes.

15 Q. So this document was produced by
16 you. We've labeled it Neu 21 through 26. And
17 it's an e-mail chain between you and Maura
18 Carter and Desiree Golen from November of 2008,
19 is that correct?

20 A. It appears so.

21 Q. So if you look at the first e-mail
22 in the chain which appears on page Neu 24 --

23 A. Mm-hmm.

24 Q. -- it appears to be an e-mail to
25 you from Maura Carter. The date is cut off on

1 NEU - AUGUST 11, 2011

2 this document, but I'll tell you that it was on
3 November 6th of 2008.

4 A. Okay.

5 Q. Now, is this the first contact that
6 you had with anyone at XIO Interactive?

7 A. I don't recall.

8 Q. Would you have any reason to
9 believe this wasn't the first communication you
10 had?

11 A. I don't, no. Other than the fact
12 that apparently they mistyped their own company
13 name in the e-mail.

14 Q. In Maura Carter's e-mail to you she
15 says that she was -- they were referred to you
16 by Eva Galpern, who was a referral specialist at
17 the Electronics Frontier Foundation. Correct?

18 A. That's what it says.

19 Q. Are you on a referral list for the
20 EFF? And I'll refer to Electronic Frontier
21 Foundation as EFF.

22 A. I work with the EFF on a variety of
23 matters. I don't know that they maintain a
24 specific referral list. Not that I'm aware of.
25 However, at some point in time Eva Galpern was

1 NEU - AUGUST 11, 2011
2 easily foresee a reason where if you had vector
3 graphics versus static graphics, that the source
4 code in how those graphics are produced may be
5 indicative of whether it's infringing or not. I
6 can recall several video games where the
7 graphics were produced in a random manner, which
8 the graphics were therefore determined to be
9 noninfringing because they were not necessarily
10 controlled as to their production by the way the
11 source code was written --

12 Q. Okay, but you didn't need to see
13 the source code in connection with your
14 representation of XIO, correct?

15 A. Not at this time.

16 Q. Did you ever see the source code
17 for XIO's application?

18 A. I did not.

19 Q. And finally, in the very first
20 e-mail in this chain, or the last e-mail in this
21 chain which appears at the top of the page,
22 Desiree Golen attaches two screen shots of
23 TetraNet, which was the name of their
24 application at the time, correct?

25 A. It appears so.